

SENATE RULES COMMITTEE SUBSTITUTE FOR
SENATE BILL 437

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

AN ACT

RELATING TO ETHICS; PROHIBITING PUBLIC EMPLOYER RETALIATORY
ACTION AGAINST PUBLIC EMPLOYEES IN CERTAIN CIRCUMSTANCES;
CREATING A RIGHT TO CIVIL ACTION FOR DAMAGES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. PUBLIC EMPLOYER RETALIATORY ACTION

PROHIBITED.--

A. A public employer shall not take any retaliatory
action against a public employee because the public employee:

(1) discloses or threatens to disclose an
activity, policy or practice of the public employer that
constitutes an unlawful or improper act or that the public
employee believes in good faith constitutes an unlawful or
improper act;

(2) provides information to, or testifies

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1 before, a public body as part of an investigation, hearing or
2 inquiry into an unlawful or improper act; or

3 (3) objects to or refuses to participate in an
4 activity, policy or practice that constitutes an unlawful or
5 improper act or that the public employee believes in good faith
6 constitutes an unlawful or improper act.

7 B. A public employer that violates the provisions
8 of this section shall be liable to the public employee for all
9 relief necessary to make the employee whole, including actual
10 damages, reinstatement with the same seniority status that the
11 employee would have had but for the violation, two times the
12 amount of back pay with interest on the back pay and
13 compensation for any special damage sustained as a result of
14 the violation. In addition, an employer shall be required to
15 pay the litigation costs and reasonable attorney fees of the
16 employee. An employee may bring an action pursuant to this
17 section in any court of competent jurisdiction.

18 C. It shall be an affirmative defense to a civil
19 action brought pursuant to this section that the action taken
20 by a public employer against a public employee was due to the
21 employee's misconduct, poor job performance or a reduction in
22 workforce for purposes unrelated to conduct prohibited pursuant
23 to this section.

24 D. The remedies provided for in this section are
25 not exclusive and shall be in addition to any other remedies

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1 provided for in any other law or available under common law.

2 E. Every public employer shall keep posted in a
3 conspicuous place on the public employer's premises notices
4 prepared by the employer that set forth the provisions of this
5 section.

6 F. Nothing in this section precludes civil actions
7 or criminal sanctions for libel, slander or other civil or
8 criminal claims against a person who files a false claim under
9 this section.

10 G. A civil action pursuant to this section shall be
11 forever barred unless the action is filed within three years
12 from the date on which the retaliatory action occurred.

13 H. As used in this section:

14 (1) "good faith" means that a reasonable basis
15 exists in fact as evidenced by the facts available to the
16 public employee;

17 (2) "public employee" means a person who works
18 for or contracts with a public employer;

19 (3) "public employer" means:

20 (a) any department, agency, office,
21 institution, board, commission, committee, branch or district
22 of state government;

23 (b) any political subdivision of the
24 state, created under either general or special act, that
25 receives or expends public money from whatever source derived;

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1 (c) any entity or instrumentality of the
2 state specifically provided for by law; and

3 (d) every office or officer of any
4 entity listed in Subparagraphs (a) through (c) of this
5 paragraph;

6 (4) "retaliatory action" means the discharge,
7 suspension, demotion or disciplining of or the threatening or
8 taking any discriminatory or adverse employment action against
9 a public employee in the terms and conditions of public
10 employment; and

11 (5) "unlawful or improper act" means a
12 practice, procedure, action or failure to act on the part of a
13 public employer that:

14 (a) violates or is a suspected violation
15 of a federal law, federal regulation, state law, state
16 administrative rule or a law of any political subdivision of
17 the state;

18 (b) constitutes malfeasance in public
19 office; or

20 (c) is of public concern or results or
21 would result in a specific and substantial danger to public
22 health and safety.

23 Section 2. APPLICABILITY.--The provisions of this act
24 apply only to civil actions for damages resulting from
25 retaliatory action that occurred on or after July 1, 2005.

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1 Section 3. EFFECTIVE DATE.--The effective date of the
2 provisions of this act is July 1, 2008.

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